

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

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)	
Benjamin Edelman,)	
third-party complainant)	
)	
v.)	Docket DOT-OST-2021-_____
)	
American Airlines)	
)	
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COMPLAINT OF BENJAMIN EDELMAN

Comments with respect to this document should be addressed to:

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Dated: December 15, 2021

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COMPLAINT OF BENJAMIN EDELMAN

1. This complaint arises out of false statements by American Airlines in the marketing of air travel, including persisting in substantially the same false statements of “tax” about which I previously complained as early as 2011, and which AA has repeatedly promised to have ceased.

I. AA PERSISTS IN FALSELY DESCRIBING ITS CARRIER-IMPOSED CHARGES AS “TAX”

2. AA persists in telling customers that their journeys included high charges for “tax” that is actually an AA fee.


3. On December 14, 2021, I used the AA Vacations site aavacations.com to inquire about coach air travel from JFK to LHR and return as well as a hotel in London. The site AA Vacations quoted a “package price” of \$2436.03 plus “taxes and carrier fees” of \$449.97. See screenshot below.

 <https://book.aavacations.com/apps/shopping/#/checkout/form>




Enter Payment & Traveler Information

* Required Information

Itinerary	Total Due: \$2,886.00 USD
Visiting London Tue, 01/18/22 - Tue, 01/25/22 1 Traveler	You saved \$178.35 by booking a package!
	Pay by Card
	Package Price \$2,436.03 USD
	Taxes and Carrier Imposed Fees \$449.97 USD
	Total Price:  \$2,886.00 USD

4. I clicked the “taxes and carrier fees” hyperlink and received the screenshot shown below. Note the indication of “other taxes” totaling \$449.97 USD.

Price Details 

Taxes & Fees	
Item	Unit Total
	In Cash
Other taxes	\$449.97 USD
Grand Total	\$449.97 USD

5. On information and belief, there are no “other taxes” totaling \$449.97 imposed by any government, airport, or similar outside authority. On information and belief, \$220 of the \$449.97 is a carrier-imposed surcharge. For example, when I requested the same air travel from ITA Matrix, it quoted taxes and fees as shown below.

United States Passenger Civil Aviation Security Service Fee (AY)	\$5.60
Carrier-imposed surcharge (YR)	\$220.00
US International Departure Tax (US)	\$38.20
US Passenger Facility Charge (XF)	\$4.50
United States APHIS Passenger Fee Passengers (XA)	\$3.96
United States Customs User Fee (YC)	\$6.11
United Kingdom Passenger Service Charge Departures (UB)	\$55.80
United Kingdom Air Passenger Duty APD (GB)	\$108.80
United States Immigration User Fee (XY)	\$7.00



Notice the \$220 carrier surcharge as well as \$229.97 of government-imposed taxes.


These amounts total exactly the \$449.97 quoted by the AA Vacations site.

II. AA’S NONEXISTENT “TAXES” ARE LARGE RELATIVE TO FARE AND OTHER CHARGES

6. I checked the AA Vacations site for various other itineraries. In each instance, the quoted “other taxes” exceeded actual taxes quoted by ITA Matrix, but appeared to include the Carrier-Imposed Surcharge itemized by ITA. On business and first class tickets from the US to UK and return, the carrier surcharge was \$1,400 round-trip, which was large relative to airfare and other components of the vacation package.

7. For example, in the following screenshots, I searched for a business class ticket from JFK to LHR on January 11 to 18, 2022, with a basic hotel. I was quoted a “Package Price” of \$1,052.89 plus “Taxes and Carrier-Imposed Fees” of \$1,783.95, for a total of \$2,836.84. The “taxes and Carrier-Imposed Fees” detail page said all \$1,783.95 was “Other taxes.” On information, \$1,400 of the \$1,783.95 was carrier surcharge, while \$383.95 was genuine government taxes. Thus $\$1,400/\$2,836.84=49.4\%$ of the quoted total is a carrier fee mischaracterized as a tax.

← → ↻ <https://book.aavacations.com/apps/shopping/#/checkout/form>  

American Airlines
Vacations 

Enter Payment & Traveler Information

* Required Information

Itinerary

Visiting London
Tue, 01/11/22 - Tue, 01/18/22
1 Traveler

Total Due: \$2,836.84 USD
You saved \$239.24 by booking a package!

Pay by Card	
Package Price	\$1,052.89 USD
Taxes and Carrier Imposed Fees	\$1,783.95 USD
Total Price: ⓘ	\$2,836.84 USD

Taxes & Fees

Item	Unit Total
	In Cash
Other taxes	\$1,783.95 USD
Grand Total	\$1,783.95 USD

III. LEGAL ANALYSIS

8. AA’s statement of “tax” is inaccurate and literally false. There should be no serious dispute that these false statements are unlawful, and violate 14 CFR 399.84(a) and 49 USC § 41712. The impermissibility of AA’s misstatements is particularly clear in light of unambiguous DOT guidance and AA’s two consent decrees on this very subject, as discussed further below.

IV. ECONOMIC AND MARKET IMPACTS OF AA’S MISSTATEMENTS

9. AA’s misrepresentations undermine public policy and accountability. When AA tells consumers that taxes are larger than is actually the case, AA invites passengers to conclude that there is no point trying to shop around, for this journey or future journeys, as any other carriers would surely have to charge the same tax (if truly imposed by a government or airport). For example, as to the price quote in paragraph 7:

With airfare and hotel jointly quoted as just \$1,052, the passenger can only conclude that the deal is extraordinary – and that there is no point searching for a better price elsewhere. Conversely, AA’s misrepresentations tell consumers that AA’s airfare is lower than is actually the case, which may lead passengers to be more accepting of inferior service, cramped seats, or other deficits. AA’s misstatement thus undermines the correct functioning of airfare markets by discouraging further price comparison and discouraging accountability to customers for quality in light of price. In each respect, the misstatement redounds to AA’s benefit.

10. Meanwhile, AA’s false statements ask passengers to blame governments or airports for high fees that are, by all indications, disproportionate to the service provided. Continuing with paragraph 7: Seeing a supposed \$1,783 tax on a \$1,052 journey (a tax rate of 169%), the passenger is likely to reach a dim view of governments and regulations which, AA tells the passenger, charge taxes that most passengers would consider excessive. AA’s misstatement thus undermines political accountability by causing passengers to blame governments and regulators for costs that actually lie with AA. Here too, the misstatement redounds to AA’s benefit.

V. AA’S SIZE, SOPHISTICATION, AND PATTERN OF VIOLATIONS

11. AA is a sophisticated carrier that should be held to the highest standards of truth in marketing, business records, and customer communications. On information and belief, by reasonable measures including revenue, passengers carried, and passenger-miles flown, AA is among the largest airlines in the world. Far smaller carriers successfully avoid the misstatements reported in this complaint.

12. I have previously reported to the DOT that AA widely characterized carrier-imposed fees as “taxes.”¹ AA offered a variety of defenses including claiming (contrary to the dated evidence in my filings) that the problems predated the start of DOT enforcement in this area, that the errors were harmless, and that I was never deceived because I am sophisticated. DOT considered and rejected each of these defenses. AA entered a December 6, 2013 consent order (Order 2013-12-6) promising “to cease and desist from similar violations” of “providing consumers verbal and written statements that refer to the total amount of taxes and carrier-imposed surcharges for a given flight as ‘taxes.’”

13. Exactly one day after the AA consent order was publicly posted, I filed a second complaint showing that, far from having ceased the misconduct as it had promised, AA in fact was continuing to mischaracterize carrier surcharges as “tax” on award bookings at AA.COM. (DOT-OST-2013-0213.) AA again offered defenses including correct information displayed elsewhere, the incorrect information appearing on a screen that only some customers check, and the problem being limited to award tickets. In a consent decree of December 12, 2016 (Order 2016-12-12), DOT again rejected AA’s defenses and held that enforcement action was warranted in light of the prior enforcement order, AA’s size and sophistication, and the likelihood that the violation would have continued had I not reported it. AA again promised to cease.

¹ See DOT-OST-2013-0024 Complaint (alleging false statements by AA telephone reservations staff on ordinary paid bookings, false statements by AA telephone reservations staff on special fares, false statements by AA telephone reservations staff on award bookings, false statements by AA staff during reaccommodation after cancellation, false statements by AA web sites in selling around-the-world tickets, and false statements in passenger correspondence), reply (alleging false statements by AA telephone reservations staff on award bookings and cancellations, false statements by AA telephone reservations staff on ordinary paid bookings, and false statements in AA.COM award “hold” emails), and supplemental filing (alleging false statements by AA telephone reservations staff on award bookings, false statements by AA telephone reservations staff on ordinary paid bookings, and false statements by AA telephone reservations staff on special fares).

14. In 2017, for a third time I reported AA mischaracterizing its fees as taxes. See DOT-OST-2017-0037-0006. AA offered yet another litany of defenses, calling the problem “obscure.” Because the misstatements there at issue occurred only after a customer had made a purchase, and because AA again said it had fixed the problem, the Department declined to impose a monetary penalty.

15. Notice the pattern of misconduct. For a period now stretching more than eight years, AA staff and systems have repeated substantially the same misrepresentation, in each instance misrepresenting an airline fee as a “tax.” The problems extended throughout AA’s operation, including not just ordinary telephone reservations agents but special fares agents, customer correspondence staff, AA.COM web site templates and email templates. The misrepresentation continues years after AA was amply on notice of the problem and now years after AA first promised DOT to cease this misconduct.

16. Indeed, American repeatedly and specifically promised DOT that it had *already* fixed customer receipts to provide accurate information. See American’s March 22, 2013 answer: “American **has already** taken steps to address the possibility that a consumer would not be correctly advised of the nature of any carrier imposed fee” (page 3, emphasis added), “American’s receipts **now reflect** the fare, the amount of taxes and carrier imposed fees, and the total ticket price” (page 6, emphasis added). American then claimed the receipt errors “have long since been addressed” (page 6), when in fact they are continuing eight years later.

17. AA’s conduct should be treated as intentional. AA has sought to classify its misstatements as unintentional and therefore less blameworthy, variously characterizing its false statements about tax as “nonconsequential mislabeling” (March

22, 2013 answer, page 2), “not deceptive” (same), “inadvertent” (page 3), “unintended confusion” (page 9), “unintentional misstate[ment]” (page 10), “mistake” (page 10), “code omission” and “incorrect display” (January 7, 2014 answer, page 2), “erroneous display” and “misstatement” (page 3), “isolated” “error... due to an obscure software fault” (April 17, 2017 answer, page 8). But AA has been on notice of these problems for fully ten years, beginning with my December 31, 2011 letter to then-AA General Counsel Gary Kennedy. This duration is more than sufficient for AA to properly train staff, adjust call center scripts, and, crucially, correct any errors in web site programming and email templates. DOT guidance of February 21, 2012 offered a 60 day period for carriers to cease false statements in this area. Having failed to do so in *ten years*, even after claiming to have already done so and even after twice officially promising DOT to do so, AA should expect little leniency.

18. Greater civil penalties are required to motivate AA to cease the false statements at issue. AA’s continued false statements should be understood as resulting from the company’s considered and intentional decision to focus its legal and management effort elsewhere, rather than fully searching for and remediating the false statements presented here. For example, with greater emphasis on fixing these problems, AA could have hired outside auditors to check the entirety of its customer-facing operations. AA’s actions indicate that the company views occasional DOT fines as just a cost of doing business, and that AA thinks that the management or technical effort required to find and fix all its false statements is more costly than the DOT fines likely to result. Greater civil penalties are appropriate in order to reiterate the seriousness of both

the underlying violations and the remarkable continuation of the violations even after promising DOT that the problems were in the past.

19. I ask that the Department of Transportation:

- (1) Exercise its authority under 49 USC 41712 to open an investigation of AA for having engaged in the unfair or deceptive practices described above;
- (2) Order American Airlines to refund to ticket purchasers all monies represented to ticket purchasers as “taxes” or government-imposed fees, but not actually remitted to governments;
- (3) Require AA to examine the entirety of its web site, email templates, customer service training materials, customer relations template replies, and other customer-facing statements in search of similar misrepresentations, and to report to DOT the methods it used for such examination and any further problems it found;
- (4) Require AA to identify the specific staff whose error led to the false statements at issue, and provide those staff with corrective training;
- (5) Impose appropriate civil penalties, in an amount reflecting the gravity of the misrepresentation in light of prior DOT orders in which AA promised that this problem was resolved and would not recur.

Respectfully submitted,
/s/
Benjamin Edelman

Certificate of Service

I hereby certify that I have, this 15th day of December, 2021 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

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/s/

Benjamin Edelman